REMARKS

Claims 11, 14-18, 22, 26-27, 30-34, 37-38, 41-42, 44-51, 59-60 and 62-63 are in the application. Claims 28-29, 35-36 and 52-58 are withdrawn. Claims 17, 30 and 45 are amended for grammar and to further illustrate commercial aspects of the invention. Support for the amendments is found, *inter alia*, in paragraph 32, the paragraphs following paragraph 92, paragraph 101 and paragraph 140. No new matter is added. Entry and consideration of the Amendment is respectfully requested. Applicants thank Examiner Duffy and Supervisory Patent Examiner Yu for the interview conducted on March 17, 2011 wherein *Harari v. Hollmer*, 94 USPQ2d 1380 (Fed. Cir. 2010) was discussed vis-à-vis the evidence and law of record.

I. The Specification is Proper Under 35 U.S.C. § 132(a)

At page 3 of the Office Action, the Office objected to the specification for including information from DeVita, et al. which was incorporated by reference into the present application and which the Office indicated was "new matter".

Applicants respectfully disagree. Applicants have made of record (e.g., in the Amendment Under 37 CFR 1.111 of December 12, 2008 and the Amendment Under 37 CFR 1.111 of April 16, 2007) arguments that the information objected to by the Office was properly incorporated into the specification. The court in *Harari v. Hollmer*, 94 USPQ2d 1380 (Fed. Cir. 2010) held the standard by which to evaluate the sufficiency of incorporation by reference language is whether the identity of the incorporated reference is clear to a reasonable examiner in light of the documents presented. In other words, is a reasonable Examiner so befuddled by the language of application such that he could not determine what information was intended to be incorporated by reference? Applicants think not. In view of the Office's admission, at page 5 of

the Office Action dated November 6, 2006 that incorporation of all information contained in the reference was proper, and in view of the holding in *Harari v. Hollmer,* together with all arguments of record, withdrawal of the objection is respectfully requested.

II. Request for Rejoinder of the Claims of Group III

Applicants respectfully maintain the request to rejoin the claims of Group III.

III. Claims 17, 30 and 32-34 Are Adequately Described Under 35 U.S.C. § 112

On page 4 of the Office Action, the Office rejected claims 17, 30 and 32-34 as allegedly lacking a written description (introducing "new matter") for reciting "pamidronate", "thalidomide" and "carmustine" because the disclosure supporting the therapeutic agents (i.e., DeVita, et al.) was improperly incorporated by reference and is allegedly new matter.

Applicants respectfully disagree and reiterate all arguments of record, including those summarized in Section I, above.

In view of the Office's admission, at page 5 of the Office Action dated November 6, 2006 that incorporation of all information contained in the subject reference was proper, and in view of the holding in *Harari v. Hollmer,* withdrawal of the objection is respectfully requested.

IV. Claims 11, 14-18, 22, 26-27, 30-34, 37-38, 41-42, 44, 46-51, 59, 60 and 62-63 are Patentable

On page 6 of the Office Action, the Office rejected claims 11, 14-18, 22, 26-27, 30-34, 37-38, 41-42, 44, 46-51, 59, 60 and 62-63 over the Claims of US Patent No. 7,538,195 (i.e., the '195 Patent) in View of Teicher, et al. because the claimed invention is allegedly substantially similar to and not patentably distinct from the invention claimed in the '195 Patent.

Solely to compact prosecution, Applicants herewith file a Terminal Disclaimer. Withdrawal of the rejection is respectfully requested.

V. Claim 45 is Patentable Under 35 U.S.C. § 101

On page 9 of the Office Action, the Office rejected claim 45 under 35 U.S.C. § 101 for double patenting because according to the Office the invention recited by claim 45 is claimed in the '195 Patent.

Applicants respectfully disagree with the Office. The Office failed to accord weight to the "therapeutic agent" recited by dependent claim 45. Solely to expedite prosecution, and without prejudice or disclaimer, Applicants herewith amend claim 45.

Withdrawal of the rejection is respectfully requested.

VI. Rejection of Claims 47 and 60 Under 35 U.S.C. 112, First Paragraph for Lack of Written Description

On page 10 of the Office Action, the Office rejected claims 47 and 60 Under 35 U.S.C. 112, first paragraph as allegedly lacking a written description for reciting "small drug", "prodrug" and "taxoid", which the Office indicated was not described in the application or priority document and for reciting a "humanized or resurfaced antibody EM164 produced by ATCC deposit number PTA-4457".

Regarding the first aspect of the rejection, Applicants respectfully disagree with the Office. *Ipsis verbis* support for the claimed molecules is found, *inter alia*, at originally filed claim 26.

On page 11 of the Office Action, the Office rejected claim 60 as allegedly lacking a written description for reciting a "humanized or resurfaced antibody EM164 produced by ATCC deposit number PTA-4457", which the Office indicated is confusing because the specification indicated that the hybridoma referred to as PTA-4457 is said to produce murine EM164.

Regarding the second aspect of the rejection, Applicants respectfully disagree with the Office. Claim 60 properly recites a humanized or resurfaced EM164 antibody. The Office is correct that EM164 corresponds to the deposited material corresponding to ATCC deposit number PTA-4457. Thus, as the Office admitted at page 11 of the Office Action, the specification adequately describes a humanized or resurfaced version of the antibody on deposit (i.e., murine EM164).

Withdrawal of the rejection is respectfully requested.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The U.S. Patent and Trademark Office is hereby directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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